Remarks

In view of the above amendments and the following remarks, reconsideration of the rejections and further examination are requested.

Claims 1, 9, 19 and 28-30 have been amended. Support for the amendments to claim 1 is located in Figure 3 and its description in the specification.

Claims 1, 2, 7-25 and 31 have been rejected under 35 U.S.C. §112, first and second paragraphs. Claim 1 has been amended so as to remove the language deemed to fail to comply with the written description requirement and deemed to be indefinite. As a result, withdrawal of these rejections is respectfully requested.

Claims 1, 2, 9, 10, 13-22, 24 and 31 have been rejected under 35 U.S.C. §102(b) as being anticipated by Bauer (WO 02/18155) (referencing Bauer (US 7,396,557)). Claim 1, 2, 8-22, 24 and 31 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Heim (US 2005/0151368) in view of Mayer (US 6,565,770).

Claim 1 has been amended so as to further distinguish the present invention, as recited therein, from the references relied upon in the rejections.

The rejections are submitted to be inapplicable to the amended claims for the following reasons.

Claim 1 is patentable over Bauer and the combination of Heim and Mayer, since claim 1 recites a forgery-proof security element including, in part:

a first layer formed of metal clusters located on a first side of a polymeric spacer layer;

a second layer formed of metal clusters located on a second side of the polymeric spacer layer, the second side being opposite to the first side;

a carrier substrate; and

a black layer located between the carrier substrate and the second layer formed of metal clusters.

Bauer and the combination of Heim and Mayer fail to disclose or suggest the layers as recited in claim 1.

Bauer discloses a forgery proof label including, layered from bottom to top, a support 2, a first layer formed of metallic clusters 1, a chemically inert second layer 3, a third layer formed of metallic clusters 4 and a chemically inert fourth layer 5. (See Figures 1 and 2).

However, Bauer does not disclose or suggest a black layer located between a carrier substrate and a second layer formed of metal clusters. As a result, claim 1 is patentable over Bauer.

Heim discloses a security element 2 having a layered structure including a transparent substrate S, an absorber layer A2, a dielectric layer D and an absorber layer A1. The absorber layers A1, A2 can be formed by physical vapor deposition (PVD) or chemical vapor deposition (CVD). (See paragraphs [0017], [0021], [0057], [0058] and [0063] and Figure 5).

In the rejection, the absorber layers A1, A2 are relied upon as corresponding to the claimed first and second layers. However, Heim fails to disclose or suggest a black layer located between a carrier substrate and a second layer formed of metal clusters as is now recited in claim 1. Therefore, Mayer must disclose or suggest these features in order for the combination of Heim and Mayer to render claim 1 obvious.

Regarding Mayer, it is relied upon in the rejection as disclosing dielectric layers 54a, 54b formed of a polymer. (See column 8, lines 29-44; column 14, lines 27-47; column 16, lines 27-44; and Figure 2).

While Mayer discloses the dielectric layers 54a, 54b, it is clear that, like Heim, Mayer fails to disclose or suggest a black layer located between a carrier substrate and a second layer formed of metal clusters as now recited in claim 1. Therefore, Mayer fails to address these deficiencies of Heim. As a result, claim 1 is patentable over the combination of Heim and Mayer.

Claim 7 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Heim in view of Mayer and further in view of Chen (US 4,792,667).

Regarding this rejection, Chen fails to address the deficiencies noted above with regard to the combination of Heim and Mayer. Therefore, claim 7 is patentable over the combination of Heim, Mayer and Chen based at least on its dependency from claim 1.

Claims 23 and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Heim in view of Mayer and further in view of Adamczyk (US 2004/0050269).

Regarding this rejection, Adamczyk fails to address the deficiencies noted above with regard to the combination of Heim and Mayer. Therefore, claims 23 and 25 are patentable over

the combination of Heim, Mayer and Adamczyk based at least on their dependency from claim 1.

Regarding withdrawn claims 3-6, 26-30 and 32-35, it is submitted that these claims should be given due consideration based on their dependency from allowable claim 1.

Because of the above-mentioned distinctions, it is believed clear that claims 1-8 and 10-35 are allowable over the references relied upon in the rejections. Furthermore, it is submitted that the distinctions are such that a person having ordinary skill in the art at the time of invention would not have been motivated to make any combination of the references of record in such a manner as to result in, or otherwise render obvious, the present invention as recited in claims 1-8 and 10-35. Therefore, it is submitted that claims 1-8 and 10-35 are clearly allowable over the prior art of record.

In view of the above amendments and remarks, it is submitted that the present application is now in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that there are issues remaining which must be resolved before allowance of the application.

Respectfully submitted,

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